

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:09-CR-00216-FL-2
5:16-CV-00665-FL

UNITED STATES OF AMERICA

v.

HYSEN SHERIFI

DEFENDANT'S MOTION TO
APPOINT COUNSEL

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Defendant Hysen Sherifi, by and through court-appointed counsel moves the Court to expand the scope of counsel's appointment to add four new claims to his pending motion to vacate. In support of his motion, the defendant asserts as follows.

FACTS

The defendant was convicted after a jury trial on October 13, 2011. (D. 1503-1504). He was sentenced on January 13, 2012. (D. 1653). He filed a direct appeal on January 24, 2012. (D. 1665). On February 4, 2014, the Fourth Circuit Court of Appeals denied his appeal. (D. 2193-2194).

Mr. Sherifi filed a *pro se* motion to vacate two of his convictions on June 27, 2016, relying upon *Johnson v. United States*, 576 U.S. 591 (2015). (D. 2248). Pursuant to Standing Order No. 15-SO-2, the Federal Public Defender's Office entered an appearance and filed an amended motion to vacate on September 19, 2016. (D. 2255). On March 2, 2020, Mr. Sherifi filed a *pro se* motion to amend his motion to vacate, adding a claim under *United States v. Davis*,

139 S.Ct. 2319 (2019). He attached a copy of the order from the Fourth Circuit denying his motion for leave to file a successive motion to vacate because the current 2255 motion was still pending before this court. (D. 2331).

Counsel was appointed to represent Mr. Sherifi on March 5, 2020, pursuant to the court's Standing Order No. 15-SO-2. (D. 2250). On August 25, 2020, the court granted Mr. Sherifi's motions to vacate and amend the motion to vacate, vacated the convictions on Counts Four and Eight, and vacated his sentence. (D. 2339). Mr. Sherifi was recently returned to the district and his sentencing hearing is presently set for May 17, 2022.

Mr. Sherifi recently advised counsel that he wishes to expand the scope of his 2255 motion to add four new claims, as follows: 1) the improper jury instruction on the two charges under 18 U.S.C. § 924(c) had a prejudicial spillover effect on the remaining counts pursuant to *United States v. Jones*, 16 F.3d. 487 (2d Cir. 1994); *United States v. Pellulo*, 14 F.3d 881, 897-900 (3rd Cir. 1994); *United States v. Pappadopoulos*, 64 F.3d 522, 529 (9th Cir. 1995); *United States v. Bruno*, 383 F.3d 65, 91 (2d Cir. 2004); and *United States v. Wright*, 665 F.3d 560, 575-577 (3rd. Cir. 2012) 2) entrapment or manufactured case by the United States, pursuant to *Sherman v. United States*, 356 U.S. 369 (1958); *United States v. Russell*, 411 U.S. 423, 534-37 (1973); and *Sorrells v. United States*, 287 U.S. 435, 441 (1932) 3) prosecutorial misconduct resulting from a *Brady* violation pursuant to *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) and *United States v. Bagley*, 473 U.S. 667, 678 (1985) and 4) Ineffective assistance of counsel during trial in violation of the Sixth Amendment to the United States Constitution and *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Mr. Sherifi also wants counsel to pursue the disclosure of online chats between Mr. Sherifi and Abdullah Eddarkoui from the United States, pursuant to Rule 6(b) of the Rules Governing 2255 Actions and *Bracy v. Gramley*, 520 U.S. 899, 908-9

(1997). This will require the amendment of Mr. Sherifi's pending motion to vacate pursuant to Fed. R. Civ. P. 15(a)(2).

ARGUMENT

Mr. Sherifi's four new claims and request to conduct discovery fall outside the scope of counsel's appointment under Standing Order No. 15-SO-2, which limits representation to post-conviction relief pursuant to *Johnson v. United States*, 576 U.S. 591 (2015). Standing Order No. 15-SO-2 (October 16, 2015). As the four new claims exceed the scope of the standing order, counsel is without authority to pursue these remedies without court approval and an appropriate order.

Mr. Sherifi has directed and authorized counsel to file this motion to seek the appointment of counsel or to expand counsel's appointment to include these four new claims and discovery.

For the foregoing reasons, the defendant HYSEN SHERIFI respectfully requests that the Court expand the scope of counsel's appointment to include the foregoing new claims, amendment of the motion to vacate, and related discovery and such other relief as may be appropriate. Counsel for the United States advised the United States will file a separate response in opposition to the motion.

By filing this motion and supporting memorandum, undersigned counsel certifies that copies of said pleading have been served upon:

Barbara Kocher and Jason Kellhofer
Assistant United States Attorneys
Eastern District of North Carolina
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601

by electronically filing the foregoing Notice with the Clerk of the Court on May 3, 2022, using the CM/ECF system which will send notification of such filing to the above.

Counsel certifies that she served the defendant by mailing a copy of Notice to him by first class United States postage prepaid addressed to Hysen Sherifi, Federal Reg. 51768-056, Edgecombe County Jail, 3005 Anaconda Road, Tarboro, North Carolina 27886 on May 3, 2022.

Respectfully submitted this May 3, 2022.

Helen C.T. Smith

s/ Helen C.T. Smith

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